



BEFORE THE ARIZONA CORPORATION COMMISSION RECEIVED

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JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
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KRISTIN K. MAYES

AZ CORP COMMISSION
DOCUMENT CONTROL

IN THE MATTER OF THE FORMAL
COMPLAINT OF ACCIPITER
COMMUNICATIONS, INC., AGAINST
VISTANCIA, L.L.C., AND COX ARIZONA
TELCOM, L.L.C.

DOCKET NO. T-03471A-05-0064

PROCEDURAL ORDER**BY THE COMMISSION:**

On January 31, 2005, Accipiter Communications, Inc. ("Accipiter") filed with the Arizona Corporation Commission ("Commission") a formal complaint against Vistancia Communications, L.L.C., Shea Sunbelt Pleasant Point, L.L.C.¹, and Cox Arizona Telcom, L.L.C. ("Cox") (collectively "respondents").

Various pleadings and letters have been filed in this docket, and several procedural conferences have been conducted to discuss the legal issues raised by the Complaint.

On November 8, 2005, Accipiter filed a Notice of Withdrawal with Prejudice. Accipiter indicated that its request to withdraw was based on its Settlement Agreement with the respondents.

On November 17, 2005, a procedural conference was held in this matter. During the procedural conference, the respondents argued that the Complaint should be dismissed, with prejudice. Staff, on the other hand, proposed, among other things, that: the docket should remain open to address policy issues raised by the Complaint; the settlement agreement should be made public; and a hearing should be held to determine the reasonableness of the settlement.

Pursuant to Procedural Order issued November 18, 2005, Staff filed a Supplemental Memorandum on December 19, 2005 addressing the issues raised at the November 17, 2005 procedural conference, including Staff's proposal for processing the Complaint filed in the docket.

¹ Vistancia Communications, L.L.C. and Shea Sunbelt Pleasant Point, L.L.C. are now known as Vistancia, L.L.C. ("Vistancia"). The case caption has been amended accordingly.

1 On January 17, 2006, Cox filed a Response to Staff's Supplemental Memorandum. Cox
2 indicated its disagreement with certain points in Staff's Memorandum, but indicated its willingness to
3 participate in a hearing process and submit testimony to: explain the reasonableness of the Settlement
4 Agreement; explain whether the Settlement Agreement addresses the issues and concerns raised in
5 this docket and whether it is in the public interest; and whether the Complaint should be dismissed.

6 A procedural conference was conducted on February 3, 2006, during which a number of
7 issues were discussed including: the scope of the proceeding; the appropriate roles and participation
8 by Staff, Accipiter, and Cox; whether Vistancia and the City of Peoria should be joined as necessary
9 or indispensable parties and/or whether individuals associated with those entities may be subpoenaed
10 to testify; whether information provided by Cox to Staff under a protective agreement, including
11 internal Cox e-mails and the amount paid to Accipiter under the Settlement Agreement, should be
12 made public; and dates for the hearing and for filing testimony. At the conclusion of the procedural
13 conference, Cox was directed to file a response by February 10, 2006, regarding its position on the
14 continued confidentiality of the payment to Accipiter and the internal e-mails provided to Staff.
15 Following a discussion on the record, Cox and Staff agreed to testimony filing dates and a hearing
16 date.

17 Following the procedural conference, Commissioner Mayes filed a letter in the docket on
18 February 3, 2006, requesting that Cox consent to public disclosure of a number of internal e-mails
19 that Cox provided to Staff pursuant to a protective agreement.

20 On February 6, 2006, a Procedural Order was issued scheduling a hearing in this matter for
21 August 14, 2006; setting dates for the filing of testimony; and directing Cox to file a response by
22 February 10, 2006 regarding the continued confidentiality of the payment to Accipiter and the
23 internal e-mails provided to Staff.

24 On February 10, 2006, Mark DiNunzio, Director of Regulatory Affairs for Cox Arizona
25 Telcom, filed a letter in response to Commissioner Mayes' February 3, 2006 letter. In the response
26 letter, Cox stated that it "is willing to remove its designation of confidentiality with respect to
27 virtually all of the documents referenced in your [Commissioner Mayes'] letter (and many other
28 documents as well)." Cox seeks ongoing confidentiality for documents provided to Staff with Bates

1 numbers C00307 and C00626, due to the inclusion of what Cox claims is "highly proprietary,
2 competitively sensitive Cox financial information that should not be made available to Cox's
3 competitors." The February 10, 2006 letter also stated that the referenced documents should be
4 considered in the context in which they were created, and attached a number of data responses
5 provided to Staff to provide the context Cox claims is necessary for consideration of the heretofore
6 confidential internal e-mails. Cox's letter indicates that it intends to get back to Commission Staff
7 regarding other documents that it will release voluntarily from the prior designation of
8 confidentiality. Cox maintains that although many of the other documents contain confidential,
9 proprietary information, Cox believes that misinformation stemming from Cox's business dealings
10 with the Vistancia developer require such disclosure to protect Cox's reputation, brand and value.
11 Finally, Cox stated that all of the parties to the Settlement Agreement (*i.e.*, Cox, Accipiter, and
12 Vistancia) have now agreed to disclose the payment terms included in the Settlement Agreement.

13 IT IS THEREFORE ORDERED that, with the exception of the two documents identified in
14 the February 10, 2006 letter (Bates numbers C00307 and C00626), Cox shall publicly file in this
15 docket, by no later than February 24, 2006, all of the responses to data requests it previously provided
16 to Staff pursuant to protective agreement. Cox shall seek ongoing confidentiality only for allegedly
17 proprietary documents that it claims contain specific confidential business information that may place
18 Cox at a competitive disadvantage due to disclosure.

19 IT IS FURTHER ORDERED that Cox shall publicly file in this docket all future responses to
20 data requests in this docket, with the exception of those documents for which it seeks and obtains a
21 designation of confidentiality under the criteria described above.

22 IT IS FURTHER ORDERED that Cox shall publicly file in this docket, by no later than
23 February 24, 2006, the payment terms negotiated in the Settlement Agreement between Cox,
24 Accipiter, and Vistancia.

25 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 – Unauthorized
26 Communications) continues to apply to this proceeding as the matter has been set for public hearing.

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28 ...

IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

Dated this 13th day of February, 2006



DWIGHT D. NODES
ASSISTANT CHIEF ADMINISTRATIVE LAW JUDGE

Copies of the foregoing mailed/delivered this 13 day of February, 2006 to:

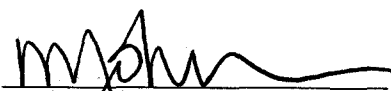
Martin A. Aronson
William D. Cleaveland
MORRILL & ARONSON, P.L.C.
One East Camelback Road, Ste. 340
Phoenix, AZ 85012
Attorneys for Accipiter Communications, Inc.

Christopher Kempley, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

Michael M. Grant
GALLAGHER & KENNEDY, P.A.
2575 East Camelback Road
Phoenix, AZ 85016-9225
Attorneys for Vistancia, L.L.C.

Ernest G. Johnson, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington
Phoenix, AZ 85007

Michael W. Patten
ROSHKA, DeWULF & PATTEN, PLC
400 E. Van Buren, Ste. 800
Phoenix, AZ 85004-2262
Attorneys for Cox Arizona Telcom, L.L.C.

By: 
Molly Johnson
Secretary to Dwight D. Nodes

Mark DiNunzio
Cox Arizona Telcom, L.L.C.
1550 W. Deer Valley Rd.
Phoenix, AZ 85027